IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.387 OF 2004

1. Bhanu Vasudev Dalvi and ors. .. Appellants. (Orig.Defts)

Vs

1. Shantaram Narayan Dhuri.
since deceased through his heirs,
a) Sitabai shantaram Dhuri and ors. .. Respondents (Orig plffs)

Mr P.C.Gore, for the appellants.
Mr S.A.Rajeshirke i/b Mr M.S.Karnik, for the respondents.

CORAM : D.B.BHOSALE,J.
DATE : 20.12.2006

PC:

1. Heard the learned counsel for the parties.

2. This appeal by the original defendants challenges the judgment and order dated 22.9.2003 rendered in Civil Appeal No.87 of 1996 by which the appeal filed by the respondents-plaintiffs came to be allowed. The repsondents-plaintiffs had filed a suit for partition and separate possession of their share in the tenanted premises. The case set up by the plaintiffs was that his father-Narayan and Vasudeo, the father of the appellants-defendant nos 1 to 3, were joint tenants. The proceedings under 32G of the BT & AL Act in respect of the suit property were initiated and concluded in

favour of them both. The 32M certificate came to be issued in favour of them both and on the basis thereof they claim one half share in the suit property and seek partition thereof.

3. Mr Khandeparkar, learned counsel for the appellants, vehemently submitted that though the 32M certificate was issued in favour of their father and father of the plaintiffs, the plaintiffs are holding possession of a small portion of the land which has a fencing and within the fencing they have their house property and that the plaintiffs have no right whatsoever over the land outside the fencing. He then submitted that there cannot be a presumption of half share in view of the separate holding and the burden was on the plaintiffs to prove that they have half share in the property. He took me through the cross-examination of the plaintiffs' witness and also the evidence of Bhanu Dalvi and the court commissioner's report in support of his submission. The appeal court in paragraphs 13 and 16 has appreciated similar contentions advanced before it and has recorded a categoric finding on the basis of the material placed on record that both have one half share each in the property. It is also clear from the statement of the father of defendant nos 1 to 3 recorded by the Tahasildar, as reflected in

paragraph 13 of the appeal court's judgment, that they have one half share each in the suit property. There is no dispute that the 32M certificate was issued in favour of the father of the plaintiffs and the defendants. Merely because there is a fencing around the house property in the field does not mean that the plaintiffs were holding that portion of the land only and have no right over the other portion of the land. As a matter of fact, in the examination-in-chief, the plaintiffs' witness has clearly stated that the fencing was erected to prevent cattle entering the house. In my opinion, no substantial question of law is either raised or involved in the instant appeal. Keeping that in view and considering the concurrent findings of fact and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under section 100 of C.P.C to disturb the findings of fact, this appeal fails and is dismissed as such. As a consequence thereof, civil application no.808 of 2005 also stands dismissed.

. Both the learned counsel for the parties have agreed that while partitioning the land, their respective house properties be not disturbed. Their statements are accepted.

(D.B.BHOSALE,J.)